



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-051; C-570-052]

Certain Hardwood Plywood Products from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 27, 2021, the U.S Court of International Trade (CIT) issued its final judgment in *Fabuwood Cabinetry Corp. v. United States*, Consol. Court no. 18-00208, sustaining the Department of Commerce (Commerce)'s first remand redetermination pertaining to the scope ruling for the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China).

Commerce is notifying the public that the CIT's final judgment in this case is not in harmony with Commerce's scope ruling, and that Commerce is withdrawing its scope ruling because the request suffered from several critical deficiencies.

DATES: Applicable June 6, 2021.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4047.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2018, Commerce found hardwood plywood in three product categories, described by the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc.

(collectively, the requestors) in their Amended Scope Ruling Request,¹ to be within the scope of the *Orders*.² As a result of the *Final Scope Ruling*, Commerce instructed U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of entries of certain hardwood plywood products from China, including the plywood in the three product categories described by the requestors in their Amended Scope Ruling Request.

Fabuwood Cabinetry Corp., Cubitac Cabinetry Corp., CNC Associates, N.Y., Inc., and Ikea Supply AG appealed Commerce's *Final Scope Ruling*. On August 19, 2020, the CIT remanded the *Final Scope Ruling* to Commerce, holding that Commerce's scope ruling failed to address: (1) the threshold question of whether the product definitions in the requestors' Amended Scope Ruling Request were specific enough to provide an adequate basis for a scope ruling, consistent with 19 CFR 351.225(c)(1); and (2) the opposing comments submitted by the interested parties with respect to the sufficiency of the accompanying supporting evidence.³ Accordingly, the CIT held that the *Final Scope Ruling* was invalid and remanded it to Commerce to further explain its acceptance of the Amended Scope Ruling Request in light of opposing comments submitted by interested parties.⁴

In its final remand redetermination issued in January 2021, Commerce revisited the record and determined that the Amended Scope Ruling Request provided a sufficiently-specific description of the products in accordance with 19 CFR 351.225(c)(1).⁵ However, in reexamining the record, Commerce determined that the Amended Scope Ruling Request, including record

¹ See Requestors Letters, "Certain Hardwood Plywood Products from the People's Republic of China: Request for Scope Ruling," dated April 6, 2018 (Initial Scope Ruling Request); and "Certain Hardwood Plywood Products from the People's Republic of China: Amendment to Request for Scope Ruling," dated July 13, 2018 (Amended Scope Ruling Request).

² See Memorandum, "Final Scope Ruling for Certain Hardwood Plywood Products from the People's Republic of China: Request by the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc.," dated September 7, 2018 (*Final Scope Ruling*) at 1; see also *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 82 FR 513 (January 4, 2018) (collectively, *Orders*).

³ See *Fabuwood Cabinetry Corp. v. United States*, 469 F. Supp. 3d 1373, 1383-84 (CIT August 19, 2020).

⁴ *Id.*, 469 F. Supp. 3d at 1389.

⁵ See Final Results of Redetermination Pursuant to Court Remand, *Fabuwood Cabinetry Corp. v. United States*, Consol. Court No. 18-00208, Slip Op. 20-121 (CIT August 19, 2020), at 8-11, 16-18, available at <https://enforcement.trade.gov/remands/20-121.pdf>.

evidence accompanying the Initial Scope Ruling Request which remained on the record, did not meet the requirements of 19 CFR 351.225(c)(1), because it suffered from several deficiencies that must be remedied before Commerce is able to evaluate the products for which the requestors were seeking a scope ruling.⁶

Timken Notice

In its decision in *Timken*,⁷ as clarified by *Diamond Sawblades*,⁸ the Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 27, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Scope Ruling*. Thus, this notice is published in fulfillment of the publication requirement of *Timken*. Additionally, Commerce will continue the suspension of liquidation of hardwood plywood subject to the *Final Scope Ruling* pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

In accordance with the CIT’s May 27, 2021, final judgement Commerce finds that the *Final Scope Ruling* must be withdrawn because it was based on a deficient request for a scope ruling.

Notification to CBP

In the event that the CIT’s ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce will notify CBP that its *Final Scope Ruling* is withdrawn and the instructions issued in accordance with that ruling are no longer applicable.

Notification to Interested Parties

⁶ *Id.* at 20-28, 31-32.

⁷ See *Timken Co. v. United States*, 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁸ See *Diamond Sawblades Manufactures Coalition v. United States*, 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Dated: June 4, 2021.

Ryan Majerus,

Deputy Assistant Secretary

for Policy and Negotiations.

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